

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
CLARKSBURG

DARUS ZEHRBACH,

Petitioner,

v.

Civ. Action No. 1:20-CV-266
Crim. Action No. 1:18-CR-60
(Kleeh)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 79]

On December 7, 2020, the pro se Petitioner, Darus Zehrbach ("Petitioner"), filed *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* (the "Motion"). [ECF No. 66].¹

I. REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. § 636 and the local rules, the Court referred the action to United States Magistrate Judge Michael J. Aloï for initial review. On June 2, 2022, the Magistrate Judge filed a Report and Recommendation ("R&R") [ECF No. 79], recommending that the Court deny the Motion and dismiss the case without prejudice. Id.

The R&R also informed the parties regarding their right to

¹ Unless otherwise noted, all docket numbers refer to Criminal Action No. 1:18CR60.

Darus Zehrbach

1:18cr60

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 79]

file specific written objections to the magistrate judge's report and recommendation. Under Local Rule 12 of the Local Rules of Prisoner Litigation Procedure of the Northern District of West Virginia, "[a]ny party may object to a magistrate judge's recommended disposition by filing and serving written objections within fourteen (14) calendar days after being served with a copy of the magistrate judge's recommended disposition." LR PL P 12. Therefore, parties had fourteen (14) calendar days from the date of service of the R&R to file "specific written objections, identifying the portions of the Report and Recommendation to which objection is made, and the basis of such objection." The R&R further warned them that the "[f]ailure to file written objections . . . shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals." The docket reflects that Petitioner accepted service of the R&R on June 7, 2022. [ECF No. 80]. Petitioner filed no objections.

When reviewing a magistrate judge's R&R, the Court must review de novo only the portions to which an objection has been timely made. 28 U.S.C. § 636(b)(1)(C). Otherwise, "the Court may adopt, without explanation, any of the magistrate judge's recommendations" to which there are no objections. Dellarciprete v. Gutierrez, 479 F. Supp. 2d 600, 603-04 (N.D.W. Va. 2007) (citing

Darus Zehrbach

1:18cr60

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 79]

Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983)). Courts will uphold portions of a recommendation to which no objection has been made unless they are clearly erroneous. See Diamond v. Colonial Life & Accident Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

II. DECISION

After receiving no objections, the Court reviewed the R&R for clear error. Upon careful review, and finding no clear error, the Court **ADOPTS** the R&R [ECF No. 79]. The *Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody* is **DENIED and DISMISSED WITHOUT PREJUDICE** for lack of jurisdiction [ECF No. 66]. Respondent's Motion to Dismiss [ECF No. 71] is **DENIED AS MOOT** and the Petitioner's Amendment to Motion to Allow Defendant to Engage in Employment, Motion for Sanctions, Motion for Partial Summary Judgment, Motion to Set a Hearing Date, and addendum to the Motion for Sanctions [ECF Nos. 52, 75, 76, 77, & 78] are also **DENIED AS MOOT**.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to counsel of record via electronic means and to the pro se Petitioner via certified mail, return receipt requested.

Darus Zehrbach

1:18cr60

ORDER ADOPTING REPORT AND RECOMMENDATION [ECF NO. 79]

DATED: July 15, 2022

Handwritten signature of Thomas S. Klee in black ink.

THOMAS S. KLEE, CHIEF JUDGE
NORTHERN DISTRICT OF WEST VIRGINIA